
UNITED STATES OF AMERICA)	
)	
v.)	PROSECUTION REPLY TO
)	DEFENSE RESPONSE TO
)	PROSECUTION'S MOTION TO
SALIM AHMED HAMDAN)	COMPEL DISCOVERY
)	
)	October 19, 2004

1. Timeliness. This reply is being filed in a timely manner within the parameters established by the Presiding Officer.

2. Relief Sought. The Prosecution seeks an Order requiring the Defense to disclose the names and contact information of the witnesses they intend to call at trial and to disclose and provide copies of or access to any documentary or other evidence they intend to introduce no later than 7 November 2004.

3. Overview. The Prosecution has been seeking discovery from the Defense since 30 July 2004. The Defense, while demanding a speedy trial, seems poised to wait until the last possible minute permitted to respond to the Prosecution's request. Meanwhile, the Prosecution has provided the Defense with literally thousands of pages of discovery and has disclosed approximately 85 percent of their witnesses to the Defense. The Prosecution will not delay in providing the names of the other 15 percent when these witnesses are solidified and contact information is obtained.

4. Additional Facts

- a. In response to a formal motion brought by the Prosecution on 1 October 2004 to compel discovery, the Defense responded with a memorandum response on 15 October 2004 to the Prosecution's discovery request of 30 July 2004.
- b. To date, the Defense has not responded to the Prosecution's Motion to Compel Discovery in accordance with POM 4.2.
- c. In response to the Prosecution request for disclosure of evidence the Defense intends to use or introduce at trial, the Defense responded that they would provide it one week prior to trial and only sooner if ordered to do so by the Presiding Officer.
- d. The Defense made a demand for a speedy trial in February of 2004.
- e. The Defense filed motions to dismiss based on speedy trial violations on 1 October 2004.

f. The Defense filed a motion to abate these proceedings on 1 October 2004.

5. Analysis

If the Defense is truly sincere in their quest for a speedy trial, it is unfathomable as to why they would wait until the last possible moment to provide discovery in this case. However, absent an order from the Presiding Officer, that is exactly what they intend to do. (Defense reply to Prosecution Request for Reciprocal Discovery dated 15 October 2004). Ironically, the Presiding Officer has issued just such an order in POM 10 which requires the Defense to provide the names of witnesses **not later than 30 business days** before the first session in which the witness is first needed to testify.

This unwillingness to provide discovery coupled with the Defense Motion to Abate the proceedings brings into question whether the Defense truly desires or is prepared to go to trial in December. Experienced trial practitioners such as the Defense Counsel in this case are well aware that with such late disclosure, the Prosecution will need additional time to prepare. Failure of the Commission to grant this additional time to the Prosecution would only detract from the “full and fair” trial the Defense has expressed they so deeply desire.

While denying the request of the Prosecution for discovery at this time, the Defense provided no viable reason as to why they needed the additional time before disclosure. They did not say that they did not possess the requested information, only that they were unwilling to disclose until the last possible moment. One can only surmise that there is some apprehension in providing the Prosecution a reasonable amount of time to investigate and test the credibility of the evidence the Defense intends to introduce.

6. Witnesses. None

7. Oral Argument. The Prosecution believes this issue can be resolved without requiring oral argument.

XXXX
Commander, JAGC, USN
Prosecutor